

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
MICHIGAN SOUTHERN DIVISION

HLV, LLC, et al.,

Plaintiffs,

v.

1:13cv1366PLM  
Hon. Paul L. Maloney

VAN BUREN COUNTY, et al.,

Defendants.

---

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

In support of their Motion for Leave to file First Amended Complaint, Plaintiffs HLV, LLC, Landworthy Container, LLC and Robert Baker state:

On December 23, 2013, Plaintiffs filed its original Complaint (Dkt. 1). Each Defendant has moved to dismiss that Complaint pursuant to Rule 12(b)(6). Plaintiffs, as agreed upon by the parties and ordered by the Court, will file a consolidated response to the pending motions. However, Plaintiffs also seek leave to file a First Amended Complaint.

As the Court and the parties are well aware “leave to amend a pleading ‘shall be freely given when justice so requires.’ ” *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.2d 427, 440 (6th Cir.2005) (quoting Fed.R.Civ.P. 15(a)). And, leave to amend should only be denied if the amendment would be futile or when it would prejudice a party – usually because it has been filed on the eve of trial. Given that this lawsuit has not advanced into discovery, and given that most of the Defendants have not even answered the Complaint, no party should be prejudiced by the amendment.


As to the issue of futility, Plaintiffs amendments are based on additional detailed facts discovered since this lawsuit was filed. The amendments address and moot many of the arguments in Defendants' Rule 12 motions. However, to the extent the Court concludes that any portion of the pending Rule 12 motions is ripe for adjudication irrespective of this proposed First Amended Complaint, Plaintiffs alternatively seek leave to file a subsequent amended complaint addressing any substantive rulings on the pending motions and including the additional facts set forth in the First Amended Complaint.

Plaintiffs have sought concurrence from their opponents as required by Local Rule 7.1. Although Plaintiffs are at a loss to understand how Plunkett Cooney can both oppose and consent to this motion, counsel for Van Buren County, Hamre, and Grote (Michael Bogren) does not oppose this motion, while counsel for Gary Stewart and the Village of Paw Paw (Robert Callahan) opposes the motion conditional upon review of the complete proposed First Amended Complaint. Counsel for the remaining Defendants have not yet responded to Plaintiffs' request for concurrence.

### **Conclusion**

For the foregoing reason, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file the First Amended Complaint, which is attached to its Motion as **Exhibit A**.

Dated: April 4, 2014



---

Counsel for Plaintiffs  
Derek S. Witte (P68329)  
Jordan C. Hoyer (P75659)  
The Law Office of Jordan C. Hoyer, PLLC  
The Trust Building  
40 Pearl Street NW, Suite 924  
Grand Rapids, MI 49503  
(616) 350-9924  
derek@jordanhoyerlaw.com